

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Alexandria Division

In re:

CONSTANCE V. KLEVINS,

Debtor.

Case No. 07-10005-RGM
(Chapter 13)

AEGIS MORTGAGE CORP.,

Plaintiff,

vs.

CONSTANCE V. KLEVINS,

Defendant.

MEMORANDUM OPINION

THIS CASE is before the court on the draft consent order modifying the automatic stay submitted by the parties. The order was endorsed by the debtor, the trustee, and the creditor. Notwithstanding the agreement of the parties, the draft order cannot be entered without a hearing because the terms may unnecessarily adversely affect the rights of unsecured creditors.

The draft order grants relief from the automatic stay permitting the creditor to foreclose on the property. It then stays that order conditioned upon compliance with certain conditions. If those conditions are not met, there is an expedited process to grant further relief. The order should not permit the lender to foreclose and then stay the mandate. It should simply modify the stay as provided in the order. This is to avoid confusion. A second order is necessary in order to foreclose.

The order also provides that a second notice of default automatically terminates the automatic stay. This provision was addressed *In re Thomas* 364 B.R. 207 (Bankr. E.D.Va. 2007).

The order should also limit the effect of the order to one year after the date of entry of the order. Circumstances change in a chapter 13 plan. Most relief from stay motions are filed early in the case. If a debtor survives the first year, the likelihood of the debtor successfully completing his plan improves. There may well be further unanticipated difficulties in later years of the plan, but because the circumstances are likely to have materially changed, the court is unwilling to extend the modification or beyond a one-year period.

In those cases in which these provisions are appropriate, the court will consider entering them but will need a factual record established to support including the provisions in an order.

DONE at Alexandria, Virginia, this 12th day of July, 2007.

/s/ Robert G. Mayer
Robert G. Mayer
United States Bankruptcy Judge

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